IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2010

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.27505 of 2004
and
WPMP.No.39030 of 2004

M.K.M.Aboobacker ...Petitioner

Versus

The Chief Engineer,
Pondicherry Electricity Board,
Pondicherry-1. ...Respondent

Prayer: Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondent board to restore the power supply to the industrial premises bearing door No.A-1 Shed, Industrial Estate, Thattanchavadi, Pondicherry in Service Connection No.1-21-41-01.

For petitioner : Mr.S.Sadasharam
For Respondents :Ms.N.Mala,
Government Advocate (P)

ORDER

The present writ petition has been filed by the petitioner challenging the order passed by the Chief Engineer, Pondicherry Electricity Board, seeking a writ of mandamus directing the respondent board to restore the power supply to the industrial premises bearing door No.A-1 Shed, Industrial Estate, Thattanchavadi, Pondicherry in Service Connection No.1-21-41-01.

2. The case of the petitioner before this court is that he is the absolute owner of the industrial premises bearing door No.A-1 Shed, Industrial Estate, Thattanchavadi, Pondicherry. The petitioner had obtained three phase service connection in his capacity as proprietor in the name of M/s.TRUST WELL for the supply of electricity from the respondent Electricity Board. Subsequently, the petitioner's industrial premises was leased out to one M/s.WELCORD Electronics Limited represented by its Director Mr.Prasanna kumar Bhutoria, under a lease deed dated 15.01.2000.

3.By virtue of the above said lease deed executed by the petitioner in favour of M/s.WELCORD Electronics Limited, the lessee was carrying on business of manufacture of electrical goods. Subsequently, the lessee committed default in the matter of payment of monthly rent which

accumulated into lakhs of rupees and, therefore, the petitioner had been demanding directly to the company/lessee to vacate and hand over possession of land. Though the lessee was promising to pay the arrears of rent, vacate and hand over possession, he was delaying the process of vacating the premises for about one year.Therefore, the petitioner sent a letter in the month of June, 2004 to the lessee M/s.WELCORD Electronics Limited. The lessee, without informing the petitioner, clandestinely vacated the industrial premises, removing all machineries and materials and without clearing the arrears of rent. Unfortunately, on enquiry, the petitioner came to know in August 2003 that there was a due of Rs.60,000/- on account of arrears of electricity consumption charges payable to the respondent Electricity Board.

4.When the petitioner came to know about the default committed by the lessee in payment of arrears, the petitioner submitted a letter dated 04.09.2003 to the Joint Engineer, Thattanchavadi Industrial Estate, Pondicherry, requesting them to collect the arrears of electricity charges from the lessee and also informed the respondent Electricity Board that he cannot be held responsible for the default committed by the lessee towards arrears of electricity charges.
5. In view of the default committed by the lessee, even after the letter sent by the petitioner, the respondent Board failed to disconnect the power supply to the lessee for reasons best known to them. Therefore, once again on 04.09.2004, the petitioner submitted a letter to the respondent explaining the situation and requested them to restore the power supply, since the power supply was already disconnected in June 2004 immediately after M/s.WELCORD Electronics Limited clandestinely vacated the industrial shed so as to enable the petitioner to enter into an greement to lease out the petitioner's industrial premises to Dinamalar Newspaper Company from 01.10.2004 onwards. As there was no response, a legal notice was issued on 01.04.1994 to the respondent board requesting to restore the power supply to the petitioner's industrial premises. No response came from the respondent and they failed to issue any direction to the respondent Electricity Board to restore the power supply to the petitioner's industrial premises.

6.The learned counsel for the petitioner further submits that the petitioner, well in advance, even before the petitioner's lessee/tenant vacated the premises of the petitioner had written a letter to the respondent board requesting them to collect the arrears of electricity consumption charges and in the alternative, request was also made to disconnect the electricity supply. Inspite of the letter, no action was taken. Thereafter, the petitioner visited the office of the Electricity Board and requested the Joint Executive Engineer of the respondent board, to act on the written request of the petitioner.

7.Inspite of his letter and his personal visits made to the office of the respondent board, the respondent did not take any action and as a result, without giving any notice to the petitioner, who is the owner of the premises, the tenant of the petitioner vacated the premises by removing all the machineries in the petitioner's premises without clearing the arrears of rent which has come to Rs.60,000/- Therefore it was pleaded that once it was brought to the notice of the respondent by way of letter as well as personal meeting with the Joint Executive Engineer of the respondent board to clear the arrears of electricity charges from the petitioner's tenant and if the respondent has not acted on the notice/letter written by the petitioner, the petitioner cannot be found fault with.

8.It was further urjed that in view of Section 56 of Electricity Act, the respondent ought to have exercised power under Section 56 by giving clear 15 days notice in writing to the petitioner's tenant and since they have not followed the provisions of law, namely Section 56, for collection of arrears of electricity consumption charges, it is not legally permissible for the Electricity Board to dis-connect the electricity connection to the petitioner's premises. As a result, the petitioner is suffering in not being able to lease out the premises to any prospective tenant and on that basis prayed for the relief sought for.

9.However, at the time of hearing the writ petition, this Court has passed an order on 16.11.2004 directing the respondent to restore the electricity service connection to the petitioner premises on the petitioner furnishing bank guarantee in favour of the respondent for the entire arrears payable by the tenant. It was also mentioned that the petitioner is liable to pay consumption charges from the date of restoration of electricity service. On the basis of the order passed by this court, the petitioner has also given bank guarantee for the entire amount.

10.Therefore, it was further mentioned that in view of the sub clause (2) of Section 56, the respondent cannot even recover the arrears caused by the petitioner's tenant in view of the long lapse of time.

11. Per contra, the learned counsel for the respondent submits that the writ petition is not maintainable in view of Rule 73 of terms and conditions of supply of electricity. As per Clause 73, the landlord petitioner of the premises should have given the copy of the lease agreement along with the letter to the respondent board at the time of entering into the lease agreement with the tenant asking the Electricity Board to directly collect the electricity consumption charges from the petitioner's tenant, and since the petitioner has not complied with clause 73, the respondent Electricity Board cannot collect the electricity consumption charges directly from the lessee. After committing mistake in not following clause 73, the petitioner by subsequent letter dated 04.09.2003 addressing to the Joint Executive Engineer, requesting the respondent department to take action for collecting the arrears from the tenant cannot be legally justified. On the basis of the above said submission, the learned counsel for the respondent prayed for dismissal of the present writ petition.

12.Heard the parties on both side.

13. Clause 73, which is extracted hereunder, clearly spells out the duty of the landlord so as to prevent escape from the future contingency:-
"73.Termination Of Agreement In Case Of Sale/Disposal/Lease:
If the consumer, at any time during the currency of the agreement, intends to sell or otherwise dispose of or lease out in whole or in part the properties or business to which supply is given or has been contracted for, he should give the Engineer of the department three month's notice of his intention to do so and clear all dues up to the date of sale/disposal/lease.

If the consumer is covered under the special guarantee, he should pay the special guarantee for the unexpired period of agreement unless the purchaser or lessee of the property, as the case may be, enters into an agreement with the department agreeing to abide by the special guarantee clause for the unexpired period of agreement.

If, in the case of such notice, the above conditions are satisfied the agreement, in so for as the consumer is concerned, will cease to operate with effect from the date specified in such notice, by without prejudice to any claim or right which may have accrued to the parties there under. If the consumer fails to give advance intimation as aforementioned of his intention to sell or lease out or otherwise dispose of the properties or business to which supply is given or contracted for, he will continue to be liable to pay the charges for consumption and other charges due to the department under the agreement even beyond the date of sale or lease out or disposal otherwise of the properties or business.
In case of lease of the property in part the consumer may continue to take supply. Supply, if required by the lessee, will be given by the department direct to the lessee."

14. In any event, default committed by the tenant in not paying the arrears and vacating and disappearing from the sight of the landlord is covered by Clause 73. A mere reading of clause 73 of

the terms and conditions of supply of electricity clearly makes out the case of the respondents that as and when the landlord enters into any lease agreement with any tenant/lessee, it is the bounden duty of the landlord to mark a copy of the agreement to the Electricity Board so as to enable it to collect the monthly electricity consumption charges directly from the tenant. In the event of not complying with clause 73 of the terms and conditions of the supply of electricity, it is too late for the landlord to complain that the Electricity Board has allowed the tenant to go out without paying the arrears of electricity charges.

15. In the result, this Court is not inclined to grant the prayer sought for in the writ petition. Accordingly, the writ petition is dismissed. In view of dismissal of the writ petition the respondent is directed to release the bank guarantee that was given by the petitioner at the time of admitting the writ petition. Consequently the connected miscellaneous petition is also dismissed. No costs.

gv

To

The Chief Engineer,
Pondicherry Electricity Board,
Pondicherry 1